

This Opinion is not a  
Precedent of the TTAB

Mailed: January 6, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*Ekster Holding B.V.*

*v.*

*LE Holdings LLC*

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Cancellation No. 92076013  
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Roberto Ledesma of Law Office of Roberto Ledesma for Ekster Holding B.V.

Joshua N. Osborn of SML Avvocati P.C. for LE Holdings LLC.

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Before Zervas, Goodman and Heasley,  
Administrative Trademark Judges.

Opinion by Goodman, Administrative Trademark Judge:

LE Holdings LLC (“Respondent”) owns a registration on the Principal Register for the mark SMART WALLET (in standard characters, with WALLET disclaimed) for “wallets” in International Class 18.<sup>1</sup> Ekster Holding B.V. (“Petitioner”) filed a petition to cancel Respondent’s registration under Section 14 of the Trademark Act, 15 U.S.C.

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<sup>1</sup> Registration No. 3839388 issued August 24, 2010 under Section 1(a), alleging a date of first use of and a date of first use in commerce of April 16, 2010; renewed.

References to the briefs and the record are to the Board’s TTABVUE docket system.

§ 1064 (3), on the ground that “smart wallet” is generic.<sup>2</sup> Petitioner has pleaded that it is a competitor that needs to use “smart wallet” to identify its goods, which are “smart wallets.”<sup>3</sup> Respondent filed an answer denying the salient allegations in the petition for cancellation.<sup>4</sup> Each party filed a trial brief.<sup>5</sup>

## I. The Record

The record includes the pleadings and, by operation of Trademark Rule 2.122(b), 37 C.F.R. § 2.122(b), the files of the involved registration. In addition, Petitioner introduced the trial testimony declaration of Richard Canneman, Director and one of the founders of Petitioner (12 TTABVUE) and notices of reliance, for the most part, on internet articles as well as other evidence more fully detailed below: First Notice of Reliance (8 TTABVUE 2), Second Notice of Reliance (8 TTABVUE 95), Third Notice of Reliance (8 TTABVUE 192), Fourth Notice of Reliance (8 TTABVUE 248), Fifth Notice of Reliance (9 TTABVUE 2), Sixth Notice of Reliance (9 TTABVUE 9), Seventh Notice of Reliance (9 TTABVUE 140), Eighth Notice of Reliance (9 TTABVUE 188), Ninth Notice of Reliance (10 TTABVUE 2), Tenth Notice of Reliance (10 TTABVUE

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<sup>2</sup> Petitioner also alleged the ground of abandonment, and that Respondent is not a legally functioning entity and cannot make use in commerce of SMART WALLET, but did not address these grounds at trial or in its brief, so they are waived. *See Gott Wines LLC v. Rehoboth Von Gott Inc.*, 107 USPQ2d 1424, 1426 n.3 (TTAB 2013) (opposer’s pleaded descriptiveness claim not argued in brief deemed waived).

<sup>3</sup> Petition to cancel ¶ 1, 1 TTABVUE.

<sup>4</sup> Respondent also asserted amplified denials in its answer, which are not true affirmative defenses. *Nationwide Mutual Ins. Co. v. Nationwide Realty, LLC*, 120 USPQ2d 1618, 1623 (TTAB 2016) (respondent “interposed 10 affirmative defenses, all of which merely amplified its denials”).

<sup>5</sup> Petitioner’s brief is at 19 TTABVUE; Respondent’s brief is at 20 TTABVUE.

47), Eleventh Notice of Reliance (10 TTABVUE 123), Twelfth Notice of Reliance (10 TTABVUE 179), Thirteenth Notice of Reliance (11 TTABVUE 2), Fourteenth Notice of Reliance (11 TTABVUE 67), Fifteenth Notice of Reliance (11 TTABVUE 114), Sixteenth Notice of Reliance (11 TTABVUE 149), and Seventeenth Notice of Reliance (11 TTABVUE 188).

Respondent submitted the trial testimony declaration of Mia Kaminski, CEO and owner of Respondent LE Holdings LLC, which licenses its brands to Mosaic Brands, Inc., a division of which does business as “Storus” with its e-commerce site <storus.com> (14 and 15 TTABVUE) and the Declaration of Scott Kaminski who “works with Mosaic Brands, Inc.,” the licensee of Respondent LE Holdings LLC (17 TTABVUE) as well as notices of reliance on, mainly, internet articles and publications: First Notice of Reliance (13 TTABVUE), Second Notice of Reliance (16 TTABVUE), and Third Notice of Reliance (18 TTABVUE).

## II. Entitlement to a Statutory Cause of Action

In every inter partes case, the plaintiff must establish its statutory entitlement to bring an opposition or cancellation proceeding. To establish entitlement to a statutory cause of action, a plaintiff must demonstrate: (i) an interest falling within the zone of interests protected by the statute and (ii) proximate causation. *Corcamore, LLC v. SFM, LLC*, 978 F.3d 1298, 2020 USPQ2d 11277, at \*4 (Fed. Cir. 2020), *cert. denied* 141 S. Ct. 2671 (2021). Demonstrating a real interest in cancelling the registration of a mark satisfies the zone-of-interests requirement, and demonstrating a reasonable

belief in damage by the registration of a mark demonstrates damage proximately caused by registration of the mark. *Id.* at 7-8.

Respondent argues that “Petitioner cannot establish a reasonable belief of damage proximately caused by the SMART WALLET mark.” 20 TTABVUE 8. Respondent submits that the name “smart wallet” would not apply to Petitioner’s goods “under the logic of Petitioner’s brief” because Petitioner’s wallets are not “smart wallets” but “an ordinary wallet with removable parts” including a “GPS tracking card.” 20 TTABVUE 8. Respondent argues that Petitioner has not “pleaded with particularity Respondent’s conduct would cause them harm” and that its arguments regarding its inability to use “smart wallet” in the generic sense are not sufficient. 20 TTABVUE 8.

Petitioner pleaded in its petition to cancel that

Petitioner, a Dutch company, has a real interest in the proceeding and a reasonable basis for its belief that it is and will continue to be damaged, as well as a direct and personal stake in the outcome of this proceeding, as stated herein, due to the fact that it is a user of the generic wording “smart wallet” and has a competitive need to use the wording “smart wallet” to identify its goods, namely, smart wallets in U.S. commerce.<sup>6</sup>

The wording “smart wallet” is used by Petitioner ... to refer to a subcategory of wallets.<sup>7</sup>

Petitioner and others in the wallet industry have a present and prospective right to use the term “smart wallet” generically in their business.<sup>8</sup>

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<sup>6</sup> Petition to Cancel ¶ 1, 1 TTABVUE.

<sup>7</sup> Petition to Cancel ¶ 3, 1 TTABVUE.

<sup>8</sup> Petition to cancel ¶ 8, 1 TTABVUE.

Petitioner's witness, Mr. Canneman, testified that Petitioner offers wallets for sale that incorporate advanced technologies and design features including prevention from RFID skimming, a "smart quick card access system," and "tracking."<sup>9</sup> Mr. Canneman testified that Petitioner uses the term "smart wallet" to identify its wallets as different from "regular wallets" and that "smart wallet" refers to a wallet incorporating "smart technological or design features."<sup>10</sup> Mr. Canneman testified that Petitioner and its competitors use the term "smart wallet" to identify their products and that there is a competitive need to use "smart wallet" in the smart wallet industry to distinguish these wallets from regular wallets.<sup>11</sup>

Mr. Canneman also testified that Respondent filed complaints with online platforms regarding Petitioner's use of "smart wallet," filed a complaint with retailer b8ta, alleging trademark infringement from Petitioner's use of "smart wallet," filed a complaint on the Kickstarter fundraising platform regarding Petitioner's use of "smart wallet," and filed a complaint on the Indiegogo fundraising platform against Petitioner claiming infringement of Respondent's trademark rights for "smart wallet" that resulted in Indiegogo suspending Petitioner's fundraising campaign.<sup>12</sup>

Petitioner also submitted under notice of reliance internet website evidence of its use of "smart wallet."<sup>13</sup>

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<sup>9</sup> Canneman declaration, ¶¶ 2, 5, 12 TTABVUE 2,3.

<sup>10</sup> Canneman declaration ¶¶ 5, 7, 21, 22, 12 TTABVUE 3, 6, 7.

<sup>11</sup> Canneman declaration ¶¶ 2, 7, 12 TTABVUE.

<sup>12</sup> Canneman declaration ¶¶ 10, 11, 12, 15, 12 TTABVUE.

<sup>13</sup> Petitioner's Fourteenth Notice of Reliance 11 TTABVUE 67 and Fifteenth Notice of Reliance 11 TTABVUE 114 (e.g., 11 TTABVUE 140 Ekster.com website "What started as a

To establish its statutory entitlement to petition cancel on a genericness ground, “a plaintiff need only show that it is engaged in the manufacture or sale of the same or related goods as those listed in the defendant’s involved application or registration and that the product in question is one which could be produced in the normal expansion of plaintiff’s business; that is, that plaintiff has a real interest in the proceeding because it is one who has a present or prospective right to use the term descriptively [or generically] in its business.” *Nobelle.com, LLC v. Qwest Commc’ns Int’l, Inc.*, 66 USPQ2d 1300, 1304 (TTAB 2003) (quoting *Binney & Smith Inc. v. Magic Marker Indus., Inc.*, 222 USPQ 1003, 1010 (TTAB 1984)).

Petitioner’s status as a competitor in the field of wallets and its current use of “smart wallet” descriptively or generically in connection with its offering for sale of wallets with technology or design features establishes its entitlement to petition to cancel Registrant’s mark. *Books on Tape, Inc. v. The Booktape Corp.*, 836 F.2d 519, 5 USPQ2d 1301, 1302 (Fed. Cir. 1987) (competitor had entitlement to petition to cancel the registration BOOKTAPES issued on the Supplemental Register); *Stuart Spector Designs Ltd. v. Fender Musical Instruments Corp.*, 94 USPQ2d 1549, 1553 (TTAB 2009) (competitors have entitlement to oppose registration based on alleged genericness and lack of distinctiveness of product configuration); *Plyboo Am., Inc. v. Smith & Fong Co.*, 51 USPQ2d 1633, 1634 (TTAB 1999) (entitlement to petition to cancel based on descriptiveness of the mark PLYBOO for bamboo laminate flooring

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rag-tag team of dreamers has turned into the biggest smart wallet brand in the world, hauled into success by the crowdfunded support of millions.”).

and bamboo plywood based on petitioner's status as competitor and petitioner's use of the term "plyboo" in connection with bamboo flooring products, bamboo sheets and bamboo panels).

Additionally, Petitioner has recounted that Respondent has interfered with its right to use "smart wallet" in its business, which also establishes a basis for entitlement to petition to cancel Registrant's mark. *See Miller v. Miller*, 105 USPQ2d 1615, 1618-19 (TTAB 2013) (determining that the cease and desist letters applicant sent to opposer "provide[d] additional evidence that opposer has business interests that have been affected, i.e., a real interest in the proceeding, and thus, has [entitlement]"); *Kelly Servs. Inc. v. Greene's Temps. Inc.*, 25 USPQ2d 1460, 1462 (TTAB 1992) (petitioner's claimed use of its clover leaf designs for a significant period of time and its recounting of two attempts by respondent to interfere with its use of the clover leaf designs was sufficient to establish petitioner's real interest in the proceeding).

We find that Petitioner and Respondent are competitors and that Respondent has attempted to prevent Petitioner from using the term "smart wallet" to describe its wallets. Moreover, damage will be presumed or inferred from one who has a sufficient interest in using the term in its business. *See DeWalt, Inc. v. Magna Power Tool Corp.*, 129 USPQ 275, 280 (CCPA 1961) (damage "will be presumed or inferred when the mark sought to be registered is descriptive of the goods and the opposer ... is one who has sufficient interest in using the descriptive term in its business.") *quoted in U. Ky. v. 40-0, LLC*, 2021 USPQ2d 253, \*11 (TTAB 2021). As a result, Petitioner has shown

a legitimate interest in preventing Registrant from gaining an alleged unfair competitive advantage by maintaining its SMART WALLET registration for a purportedly generic term for wallets. Therefore, Petitioner has proven its entitlement to a statutory cause of action.

### III. Whether Smart Wallet is Generic

A generic term “is the common descriptive name of a class of goods or services.” *Royal Crown Co. v. Coca-Cola Co.*, 892 F.3d 1358, 127 USPQ2d 1041, 1045 (Fed. Cir. 2018) (quoting *H. Marvin Ginn Corp. v. Int’l Ass’n of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986)); *Princeton Vanguard, LLC v. Frito-Lay N. Am., Inc.*, 786 F.3d 960, 114 USPQ2d 1827, 1830 (Fed. Cir. 2015). “A generic name—the name of a class of products or services—is ineligible for federal trademark registration.” *USPTO v. Booking.com*, 591 US \_\_\_, 140 S. Ct. 2298, 2302, 207 L. Ed. 2d 738, 2020 USPQ2d 10729, at \*1 (2020).

There is a two-part test used to determine whether a designation is generic: (1) what is the genus (class or category) of goods or services at issue; and (2) does the relevant public understand the designation primarily to refer to that genus of goods or services? *Marvin Ginn*, 228 USPQ at 530. “The critical issue in genericness cases is whether members of the relevant public primarily use or understand the term sought to be protected to refer to the genus of goods or services in question.” *Marvin Ginn*, 228 USPQ at 530. *See also Booking.com*, 2020 USPQ2d 10729, at \*6 (“whether a term is generic depends on its meaning to consumers”).

The parties may introduce evidence of the public’s understanding of the term “from any competent source, such as purchaser testimony, consumer surveys, listings in dictionaries, trade journals, newspapers and other publications.” *Royal Crown*, 127 USPQ2d at 1046 (quoting *In re Merrill Lynch, Pierce, Fenner, and Smith Inc.*, 828 F.2d 1567, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987)); *see also Princeton Vanguard*, 114 USPQ2d at 1830 (same) *citing In re Northland Aluminum Prods., Inc.*, 777 F.2d 1556, 227 USPQ 961, 963 (Fed. Cir. 1985); *In re Reed Elsevier Prods. Inc.*, 482 F.3d 1376, 82 USPQ2d 1378, 1380 (Fed. Cir. 2007) (finding third-party websites competent sources for determining what the relevant public understands the term to mean). Competitor use may be evidence of genericness. *See BellSouth Corp. v. DataNational Corp.*, 60 F.3d 1565, 35 USPQ2d 1554, 1558 (Fed. Cir. 1995) (“The cases have recognized that competitor use is evidence of genericness.”) (citing *Remington Prods., Inc. v. N. Am. Philips Corp.*, 892 F.2d 1576, 13 USPQ2d 1444, 1446 (Fed. Cir. 1990)).

Petitioner must prove by a preponderance of the evidence that the public understands SMART WALLET is a generic term. *Princeton Vanguard*, 114 USPQ2d at 1830; *Magic Wand Inc. v. RDB Inc.*, 940 F.2d 638, 19 USPQ2d 1551, 1554 (Fed. Cir. 1991). “To determine if a mark is generic, we examine the evidence up through the time of trial.” *Alcatraz Media Inc. v. Chesapeake Marine Tours, Inc.*, 107 USPQ2d 1750, 1758 (TTAB 2013), *aff’d mem.*, 565 F. App’x 900 (Fed. Cir. 2014).

A. What is the Genus of the Goods at Issue?

Our first task is to determine the proper genus. In defining the genus, we commonly look to the identification of goods in the application. *See In re Reed Elsevier Props. Inc.*, 82 USPQ2d at 1380; *Magic Wand* 19 USPQ2d at 1552 (a proper genericness inquiry focuses on the identification set forth in the application or certificate of registration); *In re Serial Podcast, LLC*, 126 USPQ2d 1061, 1063 (TTAB 2018) (the proper genus generally is “set forth by the recitation of services in each subject application”). The certificate of registration for SMART WALLET identifies the goods as “wallets.”

Petitioner argues that “the correct genus can be identified as smart wallets or technologically advanced wallets.” 19 TTABVUE 18. However, Respondent argues “there is no evidence that there is even a general category of ‘wallet that has advanced technological, or smart features.’” 20 TTABVUE 10.

A generic term can encompass a range of products or a particular product that may be categorized under an all encompassing term. *See, e.g., In re Hikari Sales USA, Inc.*, 2019 USPQ2d 111514, at \*2 (TTAB 2019) (fish food is the genus which includes the sub-category of fish food that comes in wafer form and contains algae); *In re Greenliant Sys. Ltd.*, 97 USPQ 2d 1078, 1082 (TTAB 2010) (NANDRIVE found generic for “electronic integrated circuits” because NAND drives were types of solid-state flash drives, a subcategory of applicant’s broadly worded “electronic integrated circuits”); Here, the genus of goods is properly identified as “wallets,” but could, by

definition, encompass more-narrowly defined goods or a sub-category such as wallets with technological and/or design features.

#### B. Who are the Relevant Public?

The second part of the *Marvin Ginn* test is whether the term sought to be registered is understood by the relevant public primarily to refer to that genus of goods or services. “The relevant public for a genericness determination is the purchasing or consuming public for the identified goods.” *Frito-Lay N. Am., Inc. v. Princeton Vanguard, LLC*, 124 USPQ2d 1184, 1187 (TTAB 2017) (citing *Magic Wand*, 19 USPQ2d at 1553); *Sheetz of Del., Inc. v. Doctor’s Assocs. Inc.*, 108 USPQ2d 1341, 1351 (TTAB 2013). Because there are no restrictions or limitations to the channels of trade or classes of consumers for the goods, “wallets,” the relevant consuming public consists of the public at large, namely those who use or purchase wallets. *See also Booking.com*, 2020 USPQ2d 10729, at \*5 (“whether ‘Booking.com’ is generic turns on whether that term, taken as a whole, signifies to consumers the class of online hotel reservation services”).

#### C. Evidence of Public Perception

We now review the evidence showing how the relevant public perceives SMART WALLET.

Petitioner’s position is that wallets that incorporate smart design features, mechanisms, or integrated technology or smart technological features are identified

by the generic term “smart wallet.”<sup>14</sup> In particular, Petitioner argues that “the term ‘smart wallet’ is a generic term understood by the relevant public primarily to refer to a type or category of wallet: a technologically advanced wallet” and that “the term ‘smart wallet’ is generic for a wallet that contains smart design and tech features which are a key aspect or purpose of the wallets.” 19 TTABVUE 20, 22, 23. Petitioner submitted evidence under notices of reliance to show public perception of “smart wallet.” *See* Petitioner’s First through Fourth, Sixth through Eleventh, Thirteenth, and Seventeenth Notices of Reliance *supra*. Petitioner argues that these “substantial” evidentiary submissions of articles, reviews, blogs, publications, as well as consumer and industry reviews on Youtube are probative of generic use of “smart wallet” not by just multinational mass media companies but also by smaller industry specific publications, journalists, bloggers, and consumers. 19 TTABVUE 28, 29, 30. Petitioner argues that online reviews/forums and social media also support generic use of “smart wallet” and that the evidence shows generic use of “smart wallet” by large and small retailers, consumers, and competitors to show a “category or type of product.” 19 TTABVUE 27, 28, 34.

Petitioner submits that “[t]his evidence may not have existed in the year 2006 when the subject registration was examined by the USPTO but it nevertheless does exist today and is undeniable.” 19 TTABVUE 41.

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<sup>14</sup> Canneman declaration ¶¶ 2, 5, 7, 21, 22, 12 TTABVUE 2, 3, 6, 7.

1. The Meaning of the Component Terms

Petitioner provided dictionary definitions for the term “smart” and dictionary definitions for the term “wallet.”<sup>15</sup> Petitioner also provided excerpts from the Office’s Identification of Goods and Services manual for goods that “incorporate smart design features, mechanisms, or integrated technology or smart technological features,” which incorporate the term “smart” as part of the identification,<sup>16</sup> as well as three applications and one registration that identified “smart wallets” in the identification.<sup>17</sup>

Definitions for smart include the following:

capable of making adjustments that resemble those resulting from human decisions, chiefly by means of electronic sensors and computer technology<sup>18</sup>; and

“(computer science) operating as if by human intelligence by using automatic computer control” and “using digital communication technology to provide many of the functions of a computer, esp internet access and social networking apps”;<sup>19</sup> and

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<sup>15</sup> Petitioner’s First Notice of Reliance 8 TTABVUE 2.

<sup>16</sup> Petitioner’s Twelfth Notice of Reliance 9 TTABVUE 179. Petitioner also submitted a European Union decision in which Respondent was refused registration for “smart wallet.” Petitioner’s Fifth Notice of Reliance at 9 TTABVUE 6. Petitioner recognizes that this decision is not binding on the Board. 19 TTABVUE 40.

<sup>17</sup> Some of third-party applications did not identify wallets as the goods, but were for downloadable software for retail stores that offer a variety of goods including smart wallets or for retail store services that offer wallets as one of the goods. We note that pending applications are only evidence that the applications were filed. *In re Phillips-Van Heusen Corp.*, 63 USPQ2d 1047, 1049 n.4 (TTAB 2002).

<sup>18</sup> American Heritage Dictionary (thefreedictionary.com) Petitioner’s First Notice of Reliance 8 TTABVUE 8.

<sup>19</sup> Collins English Dictionary (thefreedictionary.com). Petitioner’s First Notice of Reliance 8 TTABVUE 9.

about machines.<sup>20</sup>

Wallet is defined as

A small folding case that holds paper money, credit cards, etc.<sup>21</sup>; and

A small flat case that people keep money, credit cards, and small documents in and usually carry in their pocket or purse.<sup>22</sup>

2. Internet articles available to the general public in which the wording “smart wallet” is used<sup>23</sup>

Petitioner submitted internet “articles in which the wording ‘smart wallet(s)’ is used in a generic manner to identify a type of wallet that incorporates smart design features, mechanisms, or integrated technology or smart technological features,”<sup>24</sup> including the following (emphasis supplied):

**Smart wallets** are made up of invisible electronics that make it a better alternative than the regular ones. ...Features which include: minimalist size, the ability to track if they get stolen or misplaced, RFID blocking feature, durability, and more.<sup>25</sup>

**Smart wallets** are an excellent option to keep your debit and credit cards safe. With RFID technology and convenient designs, these wallets protect your information while making it super easy to access any card that you need.<sup>26</sup>

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<sup>20</sup> Macmillan Dictionary (macmillandictionary.com). Petitioner’s First Notice of Reliance 8 TTABVUE 30.

<sup>21</sup> Merriam-Webster Dictionary (merriam-webster.com). Petitioner’s First Notice of Reliance 8 TTABVUE 42.

<sup>22</sup> Macmillan Dictionary (macmillandictionary.com). Petitioner’s First Notice of Reliance 8 TTABVUE 44.

<sup>23</sup> Petitioner’s Second Notice of Reliance, 8 TTABVUE 95; Petitioner’s Third Notice of Reliance 8 TTABVUE 192; Petitioner’s Tenth Notice of Reliance 10 TTABVUE 47.

<sup>24</sup> Petitioner’s Second Notice of Reliance 8 TTABVUE 95.

<sup>25</sup> What is a Smart Wallet Made of? (woolet.co) (January 14, 2021) Petitioner’s First Notice of Reliance 8 TTABVUE 55.

<sup>26</sup> Blythe Christensen Best Smart Wallets The Daily Beast (September 20, 2021) Petitioner’s First Notice of Reliance 8 TTABVUE 63.

**Smart wallets** take the utility of a wallet to another level. They minimize wallet clutter with smartly designed pockets, while also maintaining elegance and style. They even protect against digital criminals with RFID-blocking technology to keep them from stealing your card information.<sup>27</sup>

**Smart wallets** can protect you from theft or card clash with RFID shielding, or use Bluetooth tracking so it never gets lost again. ... **smart wallets** make a lot of sense. ... Whether you want to avoid card clash, protect yourself from theft and fraud, or make sure you never misplace it around the house again, **a smart wallet** has got your back. Most use RFID shielding to block the signals from contactless cards ... Other **smart wallets** build in Bluetooth trackers from Tile or Chipolo ... you can quickly track it down again.<sup>28</sup>

**Smart wallets** are currently trending and they help keep credit cards, debit cards and IDs safe while allowing the users to access their everyday carry faster. With the best **smart wallet**, you will carry many items while maintaining a slim profile. ... the wallets are stronger and slimmer than the regular wallets ... You can walk in crowds without worrying about the safety of your credit cards because the used RFID technology is effective.<sup>29</sup>

**Smart wallets** offer a convenient way to store and transport your money, to protect against loss or theft. They also feature RFID blocking, device tracking, and modern design.<sup>30</sup>

Although you may confuse some **smart wallets** with standard ones at first glance, they have incredible features that set them apart. Many **smart wallets** have a minimalist design, RFID (Radio Frequency Identification) blocking technology, Bluetooth pairing, GPS tracker, anti-lost distance alarm, and more.<sup>31</sup>

**Smart wallets** may be the answer to keep your personal and financial information safe. ... Hackers are able to skim data from your credit card without it ever leaving your wallet. They simply have to get close enough to your wallet, and while using a

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<sup>27</sup> Jonathan Knoder and Jake Cappuccino Get Organized and Protected with a New Smart Wallet (spy.com) (October 18, 2021) Petitioner's Second Notice of Reliance 8 TTABVUE 100.

<sup>28</sup> Dominic Preston The Best Smart Wallets Tech Advisor 2021 (Techadvisor.com) Petitioner's First Notice of Reliance 8 TTABVUE 68-69.

<sup>29</sup> William Jobs The 8 Best Smart Wallets of 2021 (best.wiki) (January 6, 2021) Petitioner's First Notice of Reliance 8 TTABVUE 73, 76.

<sup>30</sup> Steven Winkelman and Jackie Dove The Best Smart Wallets to Protect Your Cash in 2021 Digital Trends (digitaltrends.com) Petitioner's Second Notice of Reliance 8 TTABVUE 107.

<sup>31</sup> Rachel Scherer The 7Best Smart Wallets Make Use Of (makeuseof.com) Petitioner's Second Notice of Reliance 8 TTABVUE 116.

small device, steal your credit card information. Luckily, many major luggage companies, such as Travelon and Samsonite, are now offering RFID blocking wallets to keep your information safe. These **smart wallets** look like an ordinary wallet, but they are equipped with special technology that will shield all of your cards from electronic skimming.<sup>32</sup>

**Smart wallets** are the new advanced version of classic wallets equipped with electronics, which keeps you out of various dangers and scams. The **smart wallet** delivers a classy-looking aesthetic and is very functional as well. ... The **smart wallet** is like a modern wallet in a classic style that communicates with smartphones ... Your money is extremely safe with the **smart wallet** because, unlike the standard wallet, your wallet can't be scanned by a potential thief. Now let's have a glimpse at some of the best **smart wallets**, you have built-in Bluetooth, GPS, and RFID blocking technology.<sup>33</sup>

What is a **smart wallet**. A **smart wallet** is basically a modern wallet that blocks RFID signals with its special protective coating. ... Not only does a **smart wallet** helps keep you safe it is far slimmer than the traditional wallet and looks immensely attractive.<sup>34</sup>

9 Stylish **Smart Wallets** with RFID Blocking for Men ... Which one of these **smart wallets** would you give as a gift.<sup>35</sup>

'Overall, **smart wallets** are not actually all that smart, which is a good thing from a privacy and security perspective,' ... they come with a variety of supercharged features. ... If someone with one of those [smartcard] readers gets close to you—on the street, in an elevator, or on a train—they could potentially steal your credit card information. 'The **smart wallets** typically have an ability to protect you from that type of attack, and that alone makes them a great option for pretty much everyone,' Gomez says, speaking to the radio frequency identification (RFID) blocking that many provide.<sup>36</sup>

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<sup>32</sup> Benefits of Smart Wallets ParkWest General Contractors (Parkwestge.com) Petitioner's Second Notice of Reliance 8 TTABVUE 136.

<sup>33</sup> Joshua Gabriel A Wallet Which Reminds You if You Forget It (Top 7 Best Smart Wallets to Buy in 2021) White Dust (whitedust.net) (March 23, 2021) Petitioner's Second Notice of Reliance 8 TTABVUE 138, 143.

<sup>34</sup> What is a smart wallet & How does it work – Plentyofgadgets (plentyofgadgets.com) Petitioner's Second Notice of Reliance 8 TTABVUE 156.

<sup>35</sup> TW2US (travelwith2ofus), Petitioner's Tenth Notice of Reliance 10 TTABVUE 56.

<sup>36</sup> Leah Campbell 11 Smart Wallets for People Who Always Seem to Lose Theirs (Rd.com) Petitioner's Third Notice of Reliance 8 TTABVUE 209.

When you need to carry cash, credit cards, and ID, a wallet is one of the best ways to do it, but the risk of theft or loss looms large, so consider a **smart wallet** with features like location tracking and RFID protection.<sup>37</sup>

In a tech-advanced world, a **smart wallet** becomes more than a luxury. A slim wallet with an added protection, anti-theft functionality, Bluetooth pairing maybe; won't that be nice to own? ... The first minimalist hybrid slim **smart wallet** on the list, FIDELO, is not mere eye candy.<sup>38</sup>

To find the best **smart wallet**, you'll need to examine a list of criteria to determine what is most important.<sup>39</sup>

Before launching the most successful **smart wallet** brand in the world, Olivier Momma and Rick Scharnigg were 22-year-old students with a gluttony for crowdfunding campaigns.<sup>40</sup>

The **smart wallets** that are being designed ensures better protection than any other wallet and helps you to do cashless transactions with much more ease. We are providing you with some of the best available **smart wallets** in the market and would [sic] give you a detailed overview of each of the product[s].<sup>41</sup>

Keeping this in mind, there are multiple facets to a **smart wallet**, making the ideal **smart wallet** hard to pick.<sup>42</sup>

## 10 Best **Smart Wallets** of 2021<sup>43</sup>

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<sup>37</sup> The Best Smart Wallets. Business Insider insider.com Petitioner's Third Notice of Reliance 8 TTABVUE 217.

<sup>38</sup> Best Smart Wallets that Fit Your Budget in 2021 (Buyer's guide) Hashanki I Geeks Blog igeeksblog.com (March 24, 2021) Petitioner's Second Notice of Reliance 8 TTABVUE 165, 170.

<sup>39</sup> Ray Prince 10 Best Smart Wallets in [year] Gadget Review (Gadgetreview.com) Petitioner's Second Notice of Reliance 8 TTABVUE 177.

<sup>40</sup> Lela London The Smart Wallet Crowdfunders Who Accidentally Built The Most Advanced Solar Panel In The World Forbes (Forbes.com) (October 26, 2018) Petitioner's Third Notice of Reliance 8 TTABVUE 203.

<sup>41</sup> 5 Best Smart Wallets In 2021; Expert Reviewed & Ranked Jasmb (jasmb.com) Petitioner's Tenth Notice of Reliance 10 TTABVUE 106.

<sup>42</sup> 7 Best Smart Wallets in 2021 The Droid Guy (November 4, 2021) (thedroidguy.com) Petitioner's Third Notice of Reliance 8 TTABVUE 238.

<sup>43</sup> Best Reviews.Guide (bestreviews.guide) Petitioner's Tenth Notice of Reliance 10 TTABVUE 52.

9to5 Mac Gift Guide: **Smart wallets** for iPhone (or your pocket)<sup>44</sup>

Ögon Designs's Stockholm V2 **Smart Wallet** Review<sup>45</sup>

Wocket **Smart Wallet** ~ Security And Safety In The Palm Of Your Hand | Jenns Blah Blah Blog<sup>46</sup>

Review: Veered **smart wallet** – if you like your wallet thick, this is it; this is where a Veered **smart wallet** comes into play. It's a souped-up cardholder that can hold cash and other valuables.<sup>47</sup>

New Age Mama Holiday Gift Guide - Ekster **Smart Wallet**. If you are looking for a great stocking stuffer, an Ekster **smart wallet** is a fun and functional choice.<sup>48</sup>

The POQIT **smart wallet** saves the day, with an internal battery that charges your devices.<sup>49</sup>

3. Internet publications showing “commercial use” of “smart wallet”

Petitioner submitted “internet publications available to the general public showing ‘generic commercial use’ of the term ‘smart wallet(s)’ by third party manufacturers, competitors, retailers, sellers, re-sellers, and online auction and marketplaces.”<sup>50</sup> Examples include (emphasis supplied):

FMammut Online Shop offers “**Smart Wallet** Ultralight.”<sup>51</sup>

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<sup>44</sup> Michael Potuck 9to5Mac (9to5mac.com) (December 14, 2021) Petitioner’s Tenth Notice of Reliance 10 TTABVUE 69.

<sup>45</sup> Bran’s World (wordsfromturbulenthill.com) Petitioner’s Tenth Notice of Reliance 10 TTABVUE 79.

<sup>46</sup> Heather Pfingsten (jennsblahblahblog.com) Petitioner’s Tenth Notice of Reliance 10 TTABVUE 93.

<sup>47</sup> Know Techie (knowtechie.com) Petitioner’s Tenth Notice of Reliance 10 TTABVUE 97, 98.

<sup>48</sup> New Age Mama (newagemama.blogspot.com) Petitioner’s Tenth Notice of Reliance 10 TTABVUE 102, 104.

<sup>49</sup> Mark Myerson The New POQIT Smart Wallet Charges Your Phone thegadgetflow.com Petitioner’s Tenth Notice of Reliance 10 TTABVUE 116.

<sup>50</sup> Petitioner’s Fourth Notice of Reliance 8 TTABVUE 248.

<sup>51</sup> Mammut.com Petitioner’s Fourth Notice of Reliance 8 TTABVUE 361.

Leatherest offers “Everest **Smart Wallet**”<sup>52</sup>

Tags-Mate offers “Air Tag **Smart Wallet**”<sup>53</sup>

Baggizmo offers “TrueBlue Wiseward **Smart Wallet** ...world’s smartest and most tech advanced wallet with 10 smart functions.”<sup>54</sup>

Arista Vault offers “Blue Men’s **Smart Wallet**”<sup>55</sup>

Kickstarter shows a campaign for “Skylight itravel **Smart Wallet** by Team Skyborne Inc.”<sup>56</sup>

Kickstarter shows a campaign for “Wallor 2.0 **Smart Wallet**”<sup>57</sup>

Chytah offers “Leather **Smart Wallet** With Bluetooth For iOS, Android Featuring Anti-Theft And Other Features”<sup>58</sup>

Stages West offers “**Smart Wallet**, Tooled Leather, Aluminum Alloy, RFID Blocking”<sup>59</sup>

Walmart offers a product listing with the product title: “Ciaod Men’s **Smart Wallet** GPS Record Anti-loss Vintage Multifunctional Leather Wallet-Brown”<sup>60</sup>

Revelot offers the “W1 **Smart Wallet**”<sup>61</sup>

Vaultskin offers “**SMART WALLETS** with High End RFID protection”<sup>62</sup>

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<sup>52</sup> Leatherest.com Petitioner’s Fourth Notice of Reliance 8 TTABVUE 366.

<sup>53</sup> Tags-mate.com Petitioner’s Sixth Notice of Reliance 9 TTABVUE 13.

<sup>54</sup> Getbaggizmo.com Petitioner’s Sixth Notice of Reliance 9 TTABVUE 18.

<sup>55</sup> Arista Vault (aristavault.com) Petitioner’s Sixth Notice of Reliance 9 TTABVUE 32, 37.

<sup>56</sup> Kickstarter (kickstarter.com) Petitioner’s Sixth Notice of Reliance 9 TTABVUE 63.

<sup>57</sup> Kickstarter (kickstarter.com) Petitioner’s Sixth Notice of Reliance 9 TTABVUE 79, 122.

<sup>58</sup> Chytah.com Petitioner’s Fourth Notice of Reliance 8 TTABVUE 388.

<sup>59</sup> Stageswest.com Petitioner’s Fourth Notice of Reliance 8 TTABVUE 396.

<sup>60</sup> Walmart.com Petitioner’s Seventh Notice of Reliance 9 TTABVUE 153.

<sup>61</sup> Revelot.com Petitioner’s Fourth Notice of Reliance 8 TTABVUE 259.

<sup>62</sup> Vaultskin.com Petitioner’s Seventh Notice of Reliance 9 TTABVUE 186.

Mywalli states “all our **smart wallets** come with a built-in tracker.”<sup>63</sup>

Walleon offers “Top Notch **Smart Wallet** with GPS Tracking”<sup>64</sup>

Volterman created “a **smart wallet** – a wallet that you can never lose.”<sup>65</sup>

Fossil offers “**smart wallets**” as a category of goods on its webpage<sup>66</sup>

- a. Search results from re-sellers and online auction for “smart wallet”<sup>67</sup>

Petitioner provided search results for “smart wallet” from re-sellers and online marketplaces showing product listings that include “smart wallet” in the product title. Examples include (emphasis supplied):

Fruugo “smart wallet” search shows listings that include unbranded “men’s mini **smart wallet**,” “men’s Charles Smith **smart wallet**,” and unbranded “antitheft RFID blocking **smart wallet**.”<sup>68</sup>

Wish marketplace “smart wallet” search shows a listing for “**Smart Wallet** for Air Tag Genuine Leather Credit Card Holder with RFID Slim Wallet for Airtag Protective Case”<sup>69</sup>

Ebay “smart wallet” search shows product listings including “Malta Full Grain Italian Leather **Smart Wallet** for Men and Women Minimalist ...” and “Men Women **Smart Wallet** Business Card Holder Multifunction ...”<sup>70</sup>

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<sup>63</sup> Mywalli.com Petitioner’s Fourth Notice of Reliance 8 TTABVUE 255.

<sup>64</sup> Walleon.net Petitioner’s Fourth Notice of Reliance 8 TTABVUE 373-374.

<sup>65</sup> Volterman.com Petitioner’s Fourth Notice of Reliance 8 TTABVUE 380, 383.

<sup>66</sup> Fossil.com Petitioner’s Fourth Notice of Reliance 8 TTABVUE 269.

<sup>67</sup> Some of these searches provide listings for Respondent’s Storus Smart Wallet. Etsy (etsy.com) Petitioner’s Seventeenth Notice of Reliance 11 TTABVUE 221; Ebay (ebay.com) Petitioner’s Fourth Notice of Reliance 8 TTABVUE 344, 345, and Petitioner’s Seventeenth Notice of Reliance 11 TTABVUE 219.

<sup>68</sup> Fruugo.us Petitioner’s Seventh Notice of Reliance 9 TTABVUE 155-156.

<sup>69</sup> Wish.com Petitioner’s Eleventh Notice of Reliance 11 TTABVUE 196; Petitioner’s Seventeenth Notice of Reliance, 196 and 198.

<sup>70</sup> Ebay.com Petitioner’s Seventeenth Notice of Reliance 11 TTABVUE 219.

Poshmark marketplace “smart wallet” search shows a seller offering “**smart wallet** bluetooth tracker.”<sup>71</sup>

4. Internet video (Youtube) screen captures showing “smart wallet” in video titles

Petitioner submitted screen captures of Youtube video pages with video titles that include the term “smart wallet” to show “generic commercial use of the term “smart wallet(s)” by third party manufacturers, competitors, reviewers, product researchers, news and media companies or networks, consumers, private individuals, or internet personalities with respect to wallets.”<sup>72</sup> Video titles include the following (emphasis supplied):

Amazing Gadgets; Top 5 Wallets 2018 -RFID & **Smart Wallets**<sup>73</sup>

**Smart Wallet** for Women (Amazon) RFID Blocking<sup>74</sup>

**SMART WALLET**. For Men’s with RFID Blocking system in 2019<sup>75</sup>

**Smart Wallet** For Men RFID Aluminum<sup>76</sup>

Best RFID Blocking Wallets | **Smart Wallets** with Anti-Theft Tech 2021<sup>77</sup>

Inway Accent **Smart Wallet** with Trackers and RFID (Giveaway)<sup>78</sup>

10 Best Wallets 2020 | Anti-Theft **Smart Wallets**<sup>79</sup>

Antitheft Wallet With GPS Finder and Unboxing Review [**Smart Wallet**]<sup>80</sup>

**Smart Wallet**<sup>81</sup>

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<sup>71</sup> Poshmark.com Petitioner’s Fourth Notice of Reliance 8 TTABVUE 274.

<sup>72</sup> Petitioner’s Eighth and Ninth Notices of Reliance 9 TTABVUE 188, 10 TTABVUE 2.

<sup>73</sup> youtube Geekster’s Petitioner’s Eighth Notice of Reliance 9 TTABVUE 222.

<sup>74</sup> youtube Jozy Chen Petitioner’s Eighth Notice of Reliance 9 TTABVUE 226.

<sup>75</sup> youtube Digital Sphere Ninth Notice of Reliance 10 TTABVUE 12.

<sup>76</sup> youtube Walletspoint Petitioner’s Ninth Notice of Reliance 10 TTABVUE 24.

<sup>77</sup> youtube Best Gears Petitioner’s Ninth Notice of Reliance 10 TTABVUE 26.

<sup>78</sup> youtube Amit Bhiwani Petitioner’s Eighth Notice of Reliance 9 TTABVUE 204.

<sup>79</sup> youtube Cool 4U Petitioner’s Eighth Notice of Reliance 9 TTABVUE 228.

<sup>80</sup> youtube Everything Visible Petitioner’s Eighth Notice of Reliance 9 TTABVUE 206.

<sup>81</sup> youtube Fixit Hannson Petitioner’s Ninth Notice of Reliance 10 TTABVUE 38.

Top 10 Best **Smart Wallet** for Men On Amazon 2021<sup>82</sup>  
Top 10 Coolest **Smart Wallet** for Men<sup>83</sup>  
Top 5 Best **SMART WALLETS** On Amazon 2018<sup>84</sup>  
Best Smart Wallets - **Smart Wallets** For Men<sup>85</sup>  
Best **Smart Wallets** 2021 | Top 10 **Smart Wallet** Buying Guide<sup>86</sup>  
The Best **Smart Wallets** for Men 2021<sup>87</sup>  
5 Best **SmartWallet** For Men 2021<sup>88</sup>  
The Best 5 **Smart Wallets** For Men You Must Try<sup>89</sup>  
TOP 5 BEST **SMART WALLETS** For Men You Must See 2018<sup>90</sup>  
7 Amazing **Smart Wallets** With WIFI Hotspot, Wireless Charger, Solar Power, GPS Tracking & Many More<sup>91</sup>  
**Smart Wallet** with payment and charging systems. 2020 Coolest Gadgets.<sup>92</sup>  
**Smart Wallet** Demo, with GPS and Alarm How Much??<sup>93</sup>  
Best **Smart Wallet** with GPS Alarm<sup>94</sup>  
World's Most Functional **Smart Wallet** 2017?<sup>95</sup>  
Automatic **SMART Wallet** Fidelo<sup>96</sup>  
I-CLIP **Smart Wallet** Review<sup>97</sup>

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<sup>82</sup> youtube Survival Gear Petitioner's Eighth Notice of Reliance 9 TTABVUE 194.

<sup>83</sup> youtube Top 10 Zone Petitioner's Eighth Notice of Reliance 9 TTABVUE 196.

<sup>84</sup> youtube Best Gadget Petitioner's Eighth Notice of Reliance 9 TTABVUE 220.

<sup>85</sup> youtube Fictional Tech Petitioner's Eighth Notice of Reliance 9 TTABVUE 224.

<sup>86</sup> youtube Top 5 Product Petitioner's Eighth Notice of Reliance 9 TTABVUE 230.

<sup>87</sup> youtube VID HD Petitioner's Eighth Notice of Reliance 9 TTABVUE 232.

<sup>88</sup> youtube HowMuchTech Petitioner's Eighth Notice of Reliance 9 TTABVUE 200.

<sup>89</sup> youtube Gadget Inspiration Petitioner's Ninth Notice of Reliance 10 TTABVUE 20.

<sup>90</sup> youtube Iotech Petitioner's Ninth Notice of Reliance 10 TTABVUE 22.

<sup>91</sup> youtube Inventions World Petitioner's Eighth Notice of Reliance 9 TTABVUE 214.

<sup>92</sup> youtube Tech Hunter World Petitioner's Ninth Notice of Reliance 10 TTABVUE 40.

<sup>93</sup> youtube Rhett Martinez Petitioner's Ninth Notice of Reliance 10 TTABVUE 16.

<sup>94</sup> youtube Best & Top Product Review Petitioner's Ninth Notice of Reliance 10 TTABVUE 18.

<sup>95</sup> youtube Gadget Diary Petitioner's Eighth Notice of Reliance 9 TTABVUE 210.

<sup>96</sup> youtube Julian McClurkin Petitioner's Ninth Notice of Reliance 10 TTABVUE 8.

<sup>97</sup> youtube The MacMaster Petitioner's Ninth notice of reliance 10 TTABVUE 10.

IWallet the Secure **Smart Wallet**<sup>98</sup>

The World's Most Advanced **Smart Wallet** Volterman Bifold Smart Wallet Review & Demo<sup>99</sup>

Walli **Smart Wallet** Unboxing<sup>100</sup>

Woolet **Smart Wallet** Review - Your Everyday Carry Just Got Smarter<sup>101</sup>

The Personalized **Smart Wallet** 2021 With Powerbank Wireless Charging Features Review<sup>102</sup>

**Smart Wallet** with Powerbank | Charge your device with wallet<sup>103</sup>

World's First **Smart Wallet** With Fingerprint Access<sup>104</sup>

STOP Losing Your Wallet!!! | Walli **Smart Wallet** Review<sup>105</sup>

[UN BOXING+PRODUCT REVIEW] Revelot W1 **Smart Wallet**<sup>106</sup>

Kickstarter Unboxing Ögon **Smart Wallet**<sup>107</sup>

Hottest Kickstarter **Smart Wallet** Projects<sup>108</sup>

The **Smart Wallet** – Kickstarter's newest!<sup>109</sup>

Nomad **Smart Wallet** Review<sup>110</sup>

LF Power Wallet - **Smart Wallet**. With built-in power bank<sup>111</sup>

Ekster 3.0 **Smart Wallet** Review and Comparison<sup>112</sup>

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<sup>98</sup> youtube CNBC Petitioner's Eighth Notice of Reliance 9 TTABVUE 202.

<sup>99</sup> youtube Chrispy Things Petitioner's Eighth Notice of Reliance 9 TTABVUE 198.

<sup>100</sup> youtube Quentin Anderson Petitioner's Eighth Notice of Reliance 9 TTABVUE 208.

<sup>101</sup> youtube YourTechExplained Petitioner's Eighth Notice of Reliance 9 TTABVUE 212.

<sup>102</sup> youtube The Print Haven by KFA Petitioner's Eighth Notice of Reliance 9 TTABVUE 216.

<sup>103</sup> youtube ARSpider Petitioner's Eighth Notice of Reliance 9 TTABVUE 218.

<sup>104</sup> youtube Buy Amazing Things Petitioner's Ninth Notice of Reliance 10 TTABVUE 14.

<sup>105</sup> youtube Alexander Hwang Petitioner's Ninth Notice of Reliance 10 TTABVUE 28.

<sup>106</sup> youtube Saif Sam Petitioner's Ninth Notice of Reliance 10 TTABVUE 30.

<sup>107</sup> youtube Whodat Comics and Movies Petitioner's Ninth Notice of Reliance 10 TTABVUE 32.

<sup>108</sup> youtube Reviews Gangs Petitioner's Ninth Notice of Reliance 10 TTABVUE 34.

<sup>109</sup> youtube Harmattan Design Petitioner's Ninth Notice of Reliance 10 TTABVUE 36.

<sup>110</sup> youtube Retro Dodo Petitioner's Ninth Notice of Reliance 10 TTABVUE 42.

<sup>111</sup> youtube LF Power Wallet Petitioner's Ninth Notice of Reliance 10 TTABVUE 46.

<sup>112</sup> youtube Jake Gage Petitioner's Thirteenth Notice of Reliance 11 TTABVUE 46.

Ekster 3.0 **Smart Wallet**, Review - Slim Trackable & RFID-Blocking Wallet<sup>113</sup>  
A **SMART WALLET??** Ekster 3.0 Wallets Unboxing and Review!<sup>114</sup>

5. Consumer and social media use of “smart wallet”

Petitioner provided “direct consumer evidence of generic use of the term “smart wallet(s)” with respect to wallets that incorporate smart design features, mechanisms, or integrated technology or smart technological features”<sup>115</sup> and social media use. Examples include the following (emphasis supplied):

I’m in the market for a new kind of “**smart wallet**” – but many of the ones I find on amazon etc. are overengineered pieces of weird. Would love to see what people use ;) ; thanks in advance!<sup>116</sup>

What functionality could a **smart wallet** provide over a normal wallet? If this situation is familiar to you, then the **smart wallets** what you need. Many wallets are easy to find as they have trackers that helps the owner to locate it. These are some of the **smart wallet** companies out there that are game changers in this industry.<sup>117</sup>

Have you ever heard about a **smart wallet**? To safeguard your wallet against the same, technology has come to rescue with **Smart Wallets**. • **Smart Wallets** can be paired with your smartphone through Bluetooth. .... **Smart Wallet** is anti-theft and anti-lost wallet. There are very amazing **smart wallet** features let us discuss below.<sup>118</sup>

I started a project about **smart\wallet** and appreciate your feedback. If you are curious about the process of my start up, need to invest in a new wallet soon or just like the idea ...<sup>119</sup>

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<sup>113</sup> youtube Hands-On Tech Petitioner’s Thirteenth Notice of Reliance 11 TTABVUE 48.

<sup>114</sup> youtube UNBX Petitioner’s Thirteenth Notice of Reliance 11 TTABVUE 66.

<sup>115</sup> Petitioner’s Eleventh Notice of Reliance 10 TTABVUE 123.

<sup>116</sup> reddit r/minimalism (reddit.com) Petitioner’s Eleventh Notice of Reliance 10 TTABVUE 146.

<sup>117</sup> Quora, (quora.com) Petitioner’s Eleventh Notice of Reliance 10 TTABVUE 150.

<sup>118</sup> Quora, (quora.com) Petitioner’s Eleventh Notice of Reliance 10 TTABVUE 152, 153.

<sup>119</sup> Christopher Lamb Linkedin (linkedin.com)Petitioner’s Eleventh Notice of Reliance 10 TTABVUE 156.

Opinions on **smart wallet** for GPS tracking. Hello, I like the idea of getting a trackable **smart wallet**, like from Woollet or Ekster, but I know how astroturfed to hell most former Kickstarter products are. I'm hoping I can get the honest impressions of somebody who's used something like this.<sup>120</sup>

The best **smart wallet** .... Approximately 1 year ago Volterman Group introduced a **smart wallet** that has a lot of features (GPS, wifi, router, etc.).<sup>121</sup>

**#smartwallet** The World's Most Powerful **Smart Wallet** that You Will Never lose!  
Shop link: volterman.com<sup>122</sup>

A **smart wallet** that keeps tracks of your valuables. Check us out on Indiegogo at igg.me/at/mywalli.<sup>123</sup>

instagram.com **#smartwallet**<sup>124</sup>

Pinterest page with search results for "smart wallet."<sup>125</sup>

Facebook page with search results for "smart wallet."<sup>126</sup>

#### 6. Respondent's use of "Smart Wallet"

Both Petitioner and Respondent provided evidence of Respondent's use of Smart Wallet:

Smart Wallet® Carbon Fiber RFID blocking<sup>127</sup>

Smart Wallet® Premium Gift Box – Premium Aluminum<sup>128</sup>

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<sup>120</sup> reddit r/wallets (reddit.com) Petitioner's Eleventh Notice of Reliance 10 TTABVUE 148.

<sup>121</sup> Android forums (android forums.com) Petitioner's Eleventh Notice of Reliance 10 TTABVUE 128.

<sup>122</sup> Twitter (twitter.com) Petitioner's Eleventh Notice of Reliance 10 TTABVUE 158.

<sup>123</sup> Twitter (twitter.com) Petitioner's Eleventh Notice of Reliance 10 TTABVUE 161.

<sup>124</sup> dappered.com Petitioner's Eleventh Notice of Reliance 10 TTABVUE 137.

<sup>125</sup> Pinterest (pinterest.com) listing various smart wallets sitewide search, Petitioner's Eleventh Notice of Reliance 10 TTABVUE 166.

<sup>126</sup> Facebook (facebook.com), sitewide search for "smart wallet," Petitioner's Eleventh Notice of Reliance 10 TTABVUE 169.

<sup>127</sup> storus.com Petitioner's Fourteenth Notice of Reliance 11 TTABVUE 71.

<sup>128</sup> storus.com Petitioner's Fourteenth Notice of Reliance 11 TTABVUE 71.

## Smart Wallet® Premium Finish – Camouflage<sup>129</sup>

Smart Wallet® As Seen on TV Smart Wallet® by Storus® is a patented credit card holder money clip wallet ...

Features + Benefits:

- **RFID Blocking Technology:** protects private information, credit cards, IDs, and driver's license from scanning devices. Ensures safety of private information from identity theft.
- **Design:** It is a 2-in-1 product with a traditional style money clip attached to a card holder chamber. ...
- **Slim + Ultra Light:** It is significantly thinner than a traditional leather wallet but can hold up to 12 cards and IDs. ...<sup>130</sup>

## Smart Wallet®

The Smart Wallet® is a patented RFID Blocking card holder money clip. It is made with thin metal plates that block RFID scanning theft. It is a minimalist front pocket wallet making it safe for travel and from pick pocket thieves. The Smart Wallet is the wallet, redefined.<sup>131</sup>

### 7. Petitioner's Witness Testimony

Petitioner's witness, Mr. Canneman, testified that "smart wallet" is "used as the name of a class of products with tech features" and that "smart wallet" describes and indicates the nature of the product offered.<sup>132</sup> Mr. Canneman stated that the term "smart wallet" is used by Petitioner and competitors to identify a wallet that is different from a regular wallet.<sup>133</sup> He testified that since Petitioner brought its product to market in 2015, "smart wallet" has been used to refer to wallets with smart

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<sup>129</sup> storus.com Petitioner's Fourteenth Notice of Reliance 11 TTABVUE 71.

<sup>130</sup> storus.com Petitioner's Fourteenth Notice of Reliance 11 TTABVUE 107.

<sup>131</sup> storus.com Petitioner's Fifteenth Notice of Reliance 11 TTABVUE 118.

<sup>132</sup> Canneman declaration ¶ 9, 17, 12 TTABVUE.

<sup>133</sup> Canneman declaration ¶ 6, 7, 12 TTABVUE.

technological or design features, and that this use of the term has continued and expanded in the marketplace, media and the public.<sup>134</sup>

Mr. Canneman stated that “[i]t is currently common and has been common for many years, for individuals and companies, including the media, users of this product, and those that offer and/or sell the product to refer generically to wallets that incorporate smart technological and/or design features as ‘smart wallets.’”<sup>135</sup> Mr. Canneman has observed that numerous articles use the term “smart wallet” and multiple bloggers, competitors and journalists continue to use the term “smart wallet” to refer to wallets that incorporate smart technological and/or design features.<sup>136</sup>

Mr. Canneman testified that Petitioner uses “the term smart wallet to inform the public, potential customers and others, that our wallet includes smart technologies in order to be able to find your wallet after loss or theft and to protect you against RFID skimming.”<sup>137</sup> Mr. Canneman states that he has observed publications and videos refer to Petitioner’s product as a “smart wallet.”<sup>138</sup>

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<sup>134</sup> Canneman declaration ¶ 21, 12 TTABVUE. Mr. Canneman has presented both fact and opinion testimony. Mr. Canneman is a lay witness under Fed. R. Evid. 701. Under this rule, any opinion testimony must be limited to opinions or inferences which are rationally based on the perception of the witness as a lay witness. We have disregarded any opinion testimony by Mr. Canneman regarding the ultimate disposition of the asserted genericness claim. See *Alcatraz Media Inc. v. Chesapeake Marine Tours Inc.*, 107 USPQ2d at 1755.

<sup>135</sup> Canneman declaration ¶ 19, 12 TTABVUE.

<sup>136</sup> Canneman declaration ¶¶ 21, 22, 12 TTABVUE.

<sup>137</sup> Canneman declaration ¶ 8, 12 TTABVUE.

<sup>138</sup> Canneman declaration ¶ 23, 12 TTABVUE.

8. Respondent's countering evidence

Respondent countered with evidence showing that there are other terms for wallets that have a slim profile. Respondent's First, Second, and Third Notices of Reliance provided evidence of online publications to show that that "the terms 'alternative wallet(s)' or 'minimalist wallets' are used by third party manufacturers, competitors, retailers, sellers, re-sellers, and online auction and marketplaces to refer to wallets that incorporate design features, mechanisms, or integrated technology or technological features."<sup>139</sup>

Respondent provided search results for Etsy and Amazon for "minimalist wallet" "slim wallet" or "alternative wallet" which yielded product listings with product titles for wallets containing these terms. Respondent provided Google search results for "minimalist wallet."<sup>140</sup>

Respondent provided search results on Reddit for "minimalist wallet" that yielded the following queries from Reddit users (consumers)<sup>141</sup>:

"Recommend slim wallet?: r/onebag – Reddit;  
Minimalist wallet recommendations? : r/EDC – Reddit;  
Looking for a minimalist wallet : r/BuyItForLife – Reddit  
Who here has moved to a Minimalist Wallet? – Reddit;  
Help me find a narrow minimalist wallet please. –Reddit  
Minimalist wallet for women? : r/minimalism – Reddit;  
[Request] Minimalist wallet : r/BuyItForLife – Reddit.

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<sup>139</sup> Respondent's First Notice of Reliance 13 TTABVUE 2; Respondent's Second Notice of Reliance 16 TTABVUE 2; Respondent's Third Notice of Reliance 18 TTABVUE 2.

<sup>140</sup> Respondent's First Notice of Reliance 13 TTABVUE 16, 64; Respondent's Second Notice of Reliance 16 TTABVUE 133.

<sup>141</sup> Respondent's Second Notice of Reliance 16 TTABVUE 119.

Respondent provided website pages of companies that offer “minimalist wallets” including Huckberry, Fantom, Paperwallet, Opumo, Taylor Stitch, Ed Charly, and Bad Idea Supply Co.<sup>142</sup>

Respondent also provided articles and publications that reviewed or discussed “minimalist wallets” or “slim wallets.”

Article titles include:

Best Slim Wallets for Men 2022 Hands On Minimalist Wallet Review<sup>143</sup>;

11 Best Slim Wallets to Suit Every Style<sup>144</sup>

The Best Slim Wallets That’s Instantly Streamline Your Everyday-Carry Setup<sup>145</sup>;

The 40 Best Minimalist Wallets<sup>146</sup>;

27 Best Minimalist Wallets for Men 2022<sup>147</sup>;

12 Best Minimalist Wallets for 2022<sup>148</sup>;

12 Best Minimalist Wallets for Men<sup>149</sup>;

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<sup>142</sup>Respondent’s Second Notice of Reliance: huckberry.com, 16 TTABVUE 43; fantomwallet.com, 16 TTABVUE 117; paperwallet.com, 16 TTABVUE 83; opumo.com, 16 TTABVUE 101; taylorstitch.com, 16 TTABVUE 68; edcharly.com, 16 TTABVUE 73; badideasupply.com, 16 TTABVUE 122.

<sup>143</sup> Gentleman Within (gentlemanwithin.com) Respondent’s First Notice of Reliance 13 TTABVUE 152.

<sup>144</sup> Douglas Helm Popular Mechanics (popularmechanics.com) (January 5, 2022) Respondent’s Second Notice of Reliance 16 TTABVUE 138.

<sup>145</sup> Stephan Vazharov Best Products (bestproducts.com) Respondent’s First Notice of Reliance 13 TTABVUE 318.

<sup>146</sup> Staff and Andy Peloquin Gearmoose (Gearmoose.com) Respondent’s First Notice of Reliance 13 TTABVUE 337.

<sup>147</sup> Botena (botena.com) Respondent’s First Notice of Reliance 13 TTABVUE 226.

<sup>148</sup> Jonathan Tayag Everyday Carry (everydaycarry.com) Respondent’s First Notice of Reliance 13 TTABVUE 236.

<sup>149</sup> By Alex, Residencelord.com (November 9, 2021) Respondent’s Third Notice of Reliance 18 TTABVUE 21.

28 Best Minimalist Wallets for Men.<sup>150</sup>

RS Recommends the Most Stylish Minimalist Wallets Worth Your Cash<sup>151</sup>;

Excerpts from these articles include the following:

A minimalist wallet, often referred to as a skinny wallet, ultra thin wallet, ultra slim wallet or even super slim wallet, is the perfect option for the modern man.<sup>152</sup>

A minimalist wallet keeps things light, simple and compact.<sup>153</sup>

What are the best minimalist wallets? The ideal minimalist wallet is super slim, secure and sophisticated. ... the HuMn Minimalist Wallet with its RFID-blocking capability is recommended for travel.<sup>154</sup>

The market for minimalist wallets pretty much exploded in the past 10 years – especially on the Kickstarter scene—where each new minimalist wallet design became slimmer than the previous one –trying to pack as much stuff as possible in a slim design that would barely produce a bulge in the tightest of back pockets.<sup>155</sup>

#### 9. Respondent's Witness Testimony

Respondent's witness, Mia Kaminski, CEO and owner of Respondent, testified that it licensed "the SMART WALLET brand to [Mosaic Brands which does business as] Storus in order to sell leather wallets, vinyl wallets and currently card holder money clips, a type of alternative wallet, and our other SMART brands to sell various

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<sup>150</sup> Talyah Brewer The TrendSpotter (thetrendspotter.com) Respondent's Second Notice of Reliance 16 TTABVUE 8.

<sup>151</sup> Oscar Hartzog Rolling Stone, (RollingStone.com) Respondent's First Notice of Reliance 13 TTABVUE 420.

<sup>152</sup> 55+ Minimalist Wallets for Men Mens Gear Buyer Guide (mensgear.net) Respondent's First Notice of Reliance 13 TTABVUE 255-256.

<sup>153</sup> Jonathan Tayag The 12 Best Minimalist Wallets for 2022 Everyday Carry (everydaycarry.com) Respondent's First Notice of Reliance 13 TTABVUE 237.

<sup>154</sup> Talyah Brewer 28 Best Minimalist Wallets for Men Trend Spotter, (trendspotter.com) Respondent's Second Notice of Reliance 16 TTABVUE 28.

<sup>155</sup> Staff and Andy Peloquin The 40 Best Minimalist Wallets Gearmoose (gearmoose.com) Respondent's First Notice of Reliance 13 TTABVUE 337.

products of many categories.”<sup>156</sup> Scott Kaminski, who works with Respondent’s licensee, testified that for over 20 years Storus has “use[d] the word SMART on various products including wallets” and “[c]onsumers recognize the distinctive SMART marks used by Storus that are embodied in our various product lines.”<sup>157</sup>

Scott Kaminski testified that Respondent’s licensee “Storus was one of the first (if not the first) in the ‘alternative wallet’ market.”<sup>158</sup> Both Scott and Mia Kaminski testified that licensee “Storus has been selling a SMART WALLET since April 16, 2010.”<sup>159</sup> In the past, SMART WALLET was branded on the wallet product itself, but currently the SMART WALLET mark is used on exterior packaging.<sup>160</sup> “The third and most current SMART WALLET product is a card holder money clip of [Mr. Kaminski’s] design that was rebranded as the SMART WALLET in July of 2020.”<sup>161</sup>

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<sup>156</sup> Declaration of Mia Kaminski ¶ 2, 14 TTABVUE; *see also* Declaration of Scott Kaminski ¶ 1, 17 TTABVUE.

<sup>157</sup> Declaration of Scott Kaminski ¶ 10, 17 TTABVUE. Scott Kaminski testified that Storus “has been selling products under our SMART branding including our Smart Money Clip products, Smart Wallet, Smart Belt Buckle, Smart Jewelry Case, Smart Pocket, Smart Card Case, Smart Money Clip Lite, Smart Accordion Wallet, Smart Fitness Wallet, Smart Multi-functional Tool, Smart Valet Tray and others.”<sup>157</sup> Declaration of Scott Kaminski ¶ 2, 17 TTABVUE. Petitioner included evidence of Respondent’s use of Smart Belt Buckle®, Smart Money Clip®, Smart Accordion Wallet™, Smart Card Case, Smart Jewelry Case®, Smart Fitness Wallet®, Smart Valet Tray®, and Smart Pocket®. Fourteenth Notice of Reliance 11 TTABVUE 82, 83, 85, and 158 and stated in the Sixteenth Notice of Reliance “that Respondent uses generic and/or descriptive terms to identify various types of wallets marketed under its STORUS trademark” (e.g., “razor wallet” and “accordion wallet”). Petitioner’s Sixteenth Notice of Reliance 11 TTABVUE 149. See n.176 *infra* regarding this testimony and evidence.

<sup>158</sup> Declaration of Scott Kaminski ¶ 2, 17 TTABVUE.

<sup>159</sup> Declaration of Scott Kaminski ¶ 8, 17 TTABVUE; Declaration of Mia Kaminski ¶ 4, 14 TTABVUE.

<sup>160</sup> Declaration of Scott Kaminski ¶ 8, 17 TTABVUE; Declaration of Mia Kaminski ¶ 3, 14 TTABVUE.

<sup>161</sup> Declaration of Scott Kaminski ¶ 8, 17 TTABVUE.

Significant amounts of money, time, and effort have been invested to advertise SMART WALLET products.<sup>162</sup> Respondent estimates \$100,000 a year has been invested in advertising the SMART WALLET products.<sup>163</sup> Respondent's witnesses testified that Storus has used product placement and social media to promote its products and has earned media attention and a "loyal online and media following."<sup>164</sup> Mia Kaminski testified that "[c]onsumers recognize the distinctive SMART marks used by Storus that are embodied in our various product lines"<sup>165</sup> and states that Storus has had "significant sales" "despite the infringement of the SMART WALLET mark by competitors."<sup>166</sup>

According to Scott Kaminski, the "term SMART is not used to describe any intellectual capability of the products themselves because the products themselves do not contain computer chips or technology. The SMART branding was chosen because we believe our products are a clever storage solution, and that it would be a smart choice if the consumer purchased our products."<sup>167</sup> Mia Kaminski testified that "SMART WALLET is not used to refer to all wallets. And these types of wallets are

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<sup>162</sup> Declaration of Scott Kaminski ¶¶ 9, 11, 17 TTABVUE; Declaration of Mia Kaminski ¶¶ 4, 5, 14 TTABVUE.

<sup>163</sup> Declaration of Mia Kaminski ¶ 5, 14 TTABVUE.

<sup>164</sup> Declaration of Scott Kaminski ¶ 11, 17 TTABVUE; Declaration of Mia Kaminski ¶ 5, 14 TTABVUE.

<sup>165</sup> Declaration of Mia Kaminski ¶ 5, 14 TTABVUE.

<sup>166</sup> Declaration of Mia Kaminski ¶ 4, 14 TTABVUE.

<sup>167</sup> Declaration of Scott Kaminski ¶ 10, 17 TTABVUE.

not intellectually smart nor do they contain any type of computer chip that could give them some form of knowledge or data.”<sup>168</sup>

According to Scott Kaminski, the “products sold by manufacturers such as Storus, Eckster [sic], Ridge and others are typically known as ‘alternative wallets,’ ‘minimalist wallets’ or ‘pocket wallets’ due to their modern materials and slim profiles compared to old-fashioned leather wallets,” and these terms are used generally to refer to these products.<sup>169</sup> Mia Kaminski similarly testified that based on her knowledge in the field, the products sold by Storus and Petitioner (Ekster) and others “are typically known as ‘alternative wallets’ or ‘minimalist wallets’ or ‘front pocket wallets’ due to their modern metal components and slim profile compared to an old-fashioned bulky leather wallet.”<sup>170</sup> Mia Kaminski states that “[b]ased on my knowledge in the field, these terms are used to generally refer to these products as a whole,” and both Mia Kaminski and Scott Kaminski testified that “the generic term for the entire wallet family of products is just ‘wallet.’”<sup>171</sup> Mia Kaminski states that she has “diligently enforced the SMART WALLET mark and used take down requests to prevent dilution of the SMART WALLET brand,” providing evidence of an E-bay takedown request with her declaration.<sup>172</sup>

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<sup>168</sup> Declaration of Mia Kaminski ¶ 7, 14 TTABVUE.

<sup>169</sup> Declaration of Scott Kaminski ¶ 3, 17 TTABVUE.

<sup>170</sup> Declaration of Mia Kaminski ¶ 7, 14 TTABVUE.

<sup>171</sup> Declaration of Scott Kaminski ¶ 3, 17 TTABVUE; Declaration of Mia Kaminski ¶ 7, 14 TTABVUE.

<sup>172</sup> Declaration of Mia Kaminski ¶ 6 and Exhibit C, 14 TTABVUE.

D. Discussion

At the outset, we do not dwell on the individual meanings of the terms “smart” and “wallet” as there is ample evidence in the record of use of the combined term “smart wallet” in connection with a type of wallet. *See In re Shiva Corp.*, 48 USPQ2d 1957, 1958 (TTAB 1998) (“when there is evidence that two or more words have been used together to form a phrase or term that forthwith conveys information regarding the goods or services set forth in the application, it is simply not necessary to engage in an analysis of each of the individual words in an effort to ascertain whether, when used together, said words forthwith convey information concerning the goods or services set forth in the application”); *see also Remington Prods. v. N. Am. Philips*, 892 F.2d 1576, 13 USPQ2d 1444 (Fed. Cir. 1990) (The term “travel care” was held to be at least descriptive based not upon a consideration of the meanings of the individual words “travel” and “care,” but rather upon the fact that the term “travel care” as a whole had been used in a descriptive or perhaps generic manner.); *In re Thunderbird Products Corp.*, 406 F.2d 1389, 160 USPQ 730, 731 (CCPA 1969) (The term “cathedral hull” was held descriptive of a type of boat based not upon the “usual . . . connotations of the word [‘cathedral’],” but rather upon the fact that the term “cathedral hull” as a whole had “entered general usage to designate a particular type within the class of goods for which registration [was] sought.”).

Respondent argues that Petitioner’s evidence does not show that “there is even a general category of “wallet that has advanced technological, or smart features,” as alleged by petitioner” and that being made of metal is not a technologically advanced

feature. 20 TTABVUE 10. Respondent further submits that many of these wallets “achieve the feature by having a specific slot for an RFID tracking chip” rather than being incorporated in the wallet itself and that the wallets are simply compatible with non-wallet products that have “advanced technological, or smart features.” 20 TTABVUE 10.

We find the evidence supports Petitioner’s assertion that the public will perceive a “smart wallet” as a category of wallet that incorporates technology, or provides a means for incorporating technology such as GPS, and includes a wallet that prevents technology-based credit-card skimming by RFID blocking materials.

In particular, the internet evidence amply demonstrates that the term “smart wallet” is commonly used, in publications and articles (e.g., bloggers, websites) but also by consumers (e.g., online forums, Quora, Reddit), third-party manufacturers, retailers (e.g., Walmart, Fossil), sellers and resellers (e.g., Ebay), competitors (e.g., Petitioner (Ekster), Woolet, Volterman), and in connection with product review and promotional videos on Youtube to refer to a wallet that is well-designed and that incorporates technological features such as RFID blocking, Bluetooth, and GPS tracking. *See Real Foods Pty Ltd. v. Frito-Lay N. Am., Inc.*, 906 F.3d. 965, 128 USPQ2d 1370, 1375 (Fed. Cir. 2018) (purchasers of applicant’s products that use the term to describe the products rather than to identify source is direct evidence of the commercial impression of the mark); *Frito-Lay N. Am., Inc. v. Princeton Vanguard, LLC*, 124 USPQ2d 1184, 1190 & 1193 (TTAB 2017) (lower case references to “pretzel crisps” “with no apparent reference to the term as a brand, or to Defendant, indicating

an understanding by the relevant public that the term ‘pretzel crisps’ refers to a product rather than to a single producer thereof”; business and industry publications are the work of authors who have an understanding that a brand is referenced in capital letters, use by these authors of lower case letters to reference the term “pretzel crisps” is evidence of the relevant public’s understanding that the term is a genus of product, not a brand), *aff’d sub nom. Snyder’s Lance, Inc. v. Frito-Lay N. Am., Inc.*, 542 F. Supp. 3d 371 (WDNC 2021), *appeal dismissed*, No. 21-1758 (4th Cir. Aug. 31, 2021); *Continental Airlines, Continental Airlines, Inc. v. United Air Lines, Inc.*, 53 USPQ2d 1385, 1395 (TTAB 1999) (use of term “e-ticket” by media and competitors indicates term is generic for electronic tickets); *Philip Morris Inc. v. Brown & Williamson Tobacco Corp.*, 230 USPQ 172, 176 (1986) (evidence that competitors have used a particular word as the name of their goods is persuasive evidence of genericness).

Petitioner argues that Respondent’s use of “smart wallet” is not trademark use on Respondent’s licensee’s packaging or advertising and is used as a noun modifying the brand name. 19 TTABVUE 39. Petitioner submits that “Respondent’s own marketing [and conduct] has taught the relevant public to understand ‘smart wallet’ as generic because Respondent uses and emphasizes the term STORUS as the trademark with “smart wallet as a noun.” 19 TTABVUE 39.

Respondent, on the other hand, argues that “SMART WALLET functions as a source identifier for products sold by ... Respondent’s exclusive licensee of the mark” for over ten years and that significant time and money have been spent to associate

Smart with its wallets, money clips, and cases and to function as a source identifier for consumers.” 20 TTABVUE 12, 13. Examples of Respondent’s licensee Storus’ use of Smart Wallet include the following:



<sup>173</sup> Declaration of Mia Kaminski Exhibit B 14 TTABVUE 23.

<sup>174</sup> Declaration of Scott Kaminski Exhibit C 17 TTABVUE 70.



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175 Declaration of Scott Kaminski Exhibit C 17 TTABVUE 71.

176 Declaration of Mia Kaminski Exhibit B 14 TTABVUE 25

Storus

## Smart Wallet®

\$ 29.99

ADD TO CART

Storus® Smart Wallet® is **NEW** and **PATENTED**. It is a 2-in-1 pocket wallet, an credit card holder + money clip, all in one. It is slim and fits into a front pants or jacket pocket or purse. It measures 3.4 inches long by 2.1 inches wide x 0.50 inches deep with expandable capability. It made the perfect gift or stocking stuffer. 1 piece.

**Features + Benefits:**

- **RFID Blocking Technology:** protects private information, credit cards, IDs, and driver's license from scanning devices. Ensures safety of private information an identity theft. US GOVT. FIPS 201 APPROVED
- **Design:** It is a 2-in-1 product with a traditional style money clip attached to a chamber, The clip can be used to hold dollar bills and receipts. The chamber is used to store credit cards and IDs. The chamber is made with a flexible elastic webbing to increase the card capacity. Cards will not slip out easily. It has a cut out design for easy removable of cards.
- **Slim + Ultra Light:** It is significantly thinner than a traditional leather wallet but can hold up to 12 cards and IDs. It is ultra light and is comfortable in a front [pants or jacket pocket making it great for travel.
- **High Quality:** It is made from 100 percent real carbon fiber and 304 stainless steel money. It is durable and lasts



<https://web.archive.org/web/20200812130403/https://www.storus.com/products/smart-money-clip-ii>

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We find that Respondent's use is in the manner of a trademark. However, proper trademark use by Respondent does not overcome the wide use of "smart wallet" in a generic sense as a sub-category of wallets by the media, bloggers, other online publications and video reviews, by consumers, and in the marketplace. *See e.g., In re International Business Machines Corp.*, 81 USPQ2d 1677, 1684 (TTAB 2006) (proper trademark use by applicant does not overcome significant evidence of generic use). We note that there is a lack of evidence in the record showing third-party recognition of SMART WALLET as Respondent's trademark to offset Petitioner's substantial evidence of generic use. *Compare In re America Online, Inc.*, 77 USPQ2d 1618, 1623 (TTAB 2006) ("the evidence of generic use is offset by applicant's evidence that shows

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<sup>177</sup> Declaration of Scott Kaminski exhibit D 17 TTABVUE 76.

not only a significant amount of proper trademark use but also trademark recognition by customers, publishers, and third parties”) with *In re Empire Tech Dev. LLC*, 123 USPQ2d 1544, 1565 (TTAB 2017) (citation omitted) (record was not “mixed on the question of genericness” because it showed “use of ‘coffee flour’ almost exclusively to refer to a genus of flour made from coffee cherry skins, pulp, and pectin”).

Respondent also points to its enforcement efforts stating that it has “diligently enforced its mark and issued takedown requests.” 20 TTABVUE 13. While Respondent provided testimony and evidence relating to its policing in the form of issuing take-down requests, it did not provide evidence and testimony of its success in these efforts (through third-party compliance) to show recognition by third-parties of its trademark. *See In re Trek 2000 Int’l Ltd.*, 97 USPQ2d 1106, 1112 (TTAB 2010) (record included examples of applicant’s successful efforts to police the misuse of its claimed mark as a generic term, including “letters to and responses from various media outlets, including ‘PC Magazine’ and ‘The New York Times,’ whereby they agreed not to use THUMBDRIVE in a generic manner.”). Nor does the record show any effort by Respondent to correct media use of “smart wallet” in a generic manner, which undercuts its trademark use, given the significant volume of third-party media use (e.g., publications and articles and video product reviews) of SMART WALLET as a generic term. *See In re Empire Tech Dev. LLC*, 123 USPQ2d at 1565 (no evidence that applicant “took any steps to have the media correct their own generic uses of ‘coffee flour’” and its “failure to police these generic uses of its proposed mark undercuts its claim that the relevant purchasing public will understand COFFEE

FLOUR to be anything other than the generic term for flour made from coffee cherries”).

Respondent states that it has used SMART WALLET as a source identifier for its wallet for over ten years and has used SMART as a source identifier for its line of products,<sup>178</sup> and as a result, consumers recognize its SMART marks on its various product lines. 20 TTABVUE 12, 17. However, even if the relevant public associates SMART WALLET with Respondent’s licensee, this cannot rebut a finding of genericness. *See In re Analog Devices*, 871 F.2d 1097, 10 USPQ2d 1879, 1879 (Fed. Cir. 1989) (unpublished) (“ADI’s evidence shows only that the relevant public may also have come to associate ADI with the term ‘analog devices’ even though it is generic. Such evidence does not, indeed cannot, rebut genericness.”).

Respondent’s witness also testified that its licensee “was one of the first (if not the first) in the ‘alternative wallet’ market.”<sup>179</sup>

However, it does not matter if Respondent’s licensee was the first user of SMART WALLET. The law does not permit “anyone to obtain a complete monopoly on use of a descriptive [or generic] term simply by grabbing it first.” *KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc.*, 543 U.S. 111, 122, 125 S. Ct. 542, 160 L. Ed. 2d 440,

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<sup>178</sup> As part of its amplified denial, Respondent stated that its licensee uses SMART as a source identifier for many of its products. Answer ¶ 18, 5 TTABVUE. However, the fact that Respondent owns and its licensee uses other SMART marks does not preclude a finding of genericness for SMART WALLET as we must independently assess the evidence of record of public perception for this particular term. *See, e.g., In re Shinnecock Smoke Shop*, 571 F.3d 1171, 1174 (Fed. Cir. 2009) (“Applicant’s allegations regarding similar marks are irrelevant because each application must be considered on its own merits.”).

<sup>179</sup> Declaration of Scott Kaminski ¶ 2, 17 TTABVUE.

72 USPQ2d 1833, 1838 (2004) (citation omitted); *see also In re Pennington Seed, Inc.*, 466 F.3d 1053, 80 USPQ2d 1758, 1761-62 (Fed. Cir. 2006) (first user of seed varietal name was not entitled to monopoly on the name of the varietal); *In re Bailey Meter Co.*, 102 F.2d 843, 41 USPQ 275, 276 (CCPA 1939) (being “the first and only one to adopt and use the mark sought to be registered does not prove that the mark is not descriptive”); *see also In re Merrill Lynch*, 4 USPQ2d at 1142 (“To allow trademark protection for generic terms, i.e., names which describe the genus of goods being sold, even when these have become identified with a first user, would grant the owner of the mark a monopoly, since a competitor could not describe his goods as what they are.”).

Respondent argues that “[w]allets with a slim design are commonly referred to by the public as ‘minimalist wallets,’ ‘slim wallets,’ or ‘alternative wallets’ rather than SMART WALLET” and these “are the generic terms for this type of wallet.” 20 TTABVUE 14.

Although, as Respondent maintains, other terms such as “minimalist wallet” “slim wallet” and “alternative wallets” may be used to identify Respondent’s type of product, it is well settled that there can be more than one generic term to name a product. *Roselux Chemical Co., Inc. v. Parsons Ammonia Co., Inc.*, 299 F.2d 855, 132 USPQ 627, 632 (CCPA 1962); *Clairol, Inc. v. Roux Distributing Co.*, 280 F.2d 863, 126 USPQ 397, 398 (CCPA 1960) (“The same merchandise may, and often does, have more than one generic name.”). Here, there is sufficient evidence that “smart wallet” is perceived by the general public as a sub-category of wallets, and “smart wallet” is

simply another generic name for a “slim wallet,” “minimal wallet,” or “alternative wallet” which must have RFID blocking or other technological and design features. When there is more than one generic name for a product, “all the generic names belong in the public domain and are unregistrable.” *In re Women’s Publishing Co. Inc.*, 23 USPQ2d 1876, 1877 (TTAB 1992) (citation omitted).

Respondent argues that SMART WALLET is not the generic name for an RFID-blocking wallet. 20 TTABVUE 13. Respondent states that the term SMART as used on its goods does not “describe the intellectual capabilities of the products because they do not contain computer chips or technology, rather, the products themselves are a clever storage solution and a smart choice by a customer if they purchase products within the line.” 20 TTABVUE 12. Respondent, states that the most recent SMART WALLET product incorporates “RFID blocking metal” but does not incorporate other technology. 20 TTABVUE 9, 13.

There is significant evidence that wallets containing RFID blocking are referred to and understood by the public as “smart wallets” —a sub-group of wallets. *In re Cordua Rests., Inc.*, 823 F.3d 594 , 118 USPQ2d 1632, 1636, 1638 (Fed. Cir. 2016) (“the correct question is not whether ‘churrascos’ is generic as applied to Cordua’s own restaurants but rather whether the term is understood by the restaurant going public to refer to the wider genus of restaurant services”; “the term ‘pizzeria’ would be generic for restaurant services, even though the public understands the term to refer to a particular sub-group or type of restaurant rather than to all restaurants”).

As noted by the Board in *In re Analog Devices Inc.*, 6 USPQ2d 1808, 1810 (TTAB 1988), *aff'd* 871 F.2d 1097, 10 USPQ2d 1879 (Fed. Cir. 1989):

While some of the products enumerated in applicant's recitation of goods may not include devices in this category or class, at least some of the goods, ... would, in our view, fall within the category ... There is no logical reason to treat differently a term that is generic of a category or class of products where some but not all of the goods identified in an application fall within that category.

#### IV. Conclusion

Following full consideration of all evidence and arguments, we find that Petitioner has proven by a preponderance of the evidence that Respondent's asserted mark SMART WALLETS is the generic name for a sub-category of "wallets" within the meaning of Section 14(3) of the Trademark Act.

**Decision:** The petition for cancellation on the ground that Respondent's registered mark SMART WALLET is the generic name of the goods for which it is registered is granted. Registration No. 3839388 shall be cancelled in due course.